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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RUBIA SERNA,

12 Plaintiff,

13 v.

14 COSTCO WHOLESALE
15 CORPORATION,

16 Defendant.

No. 1:23-CV-01225-KES-CDB

ORDER GRANTING MOTION TO FILE
AMENDED COMPLAINT AND TO
REMAND ACTION

(Doc. 22)

17 Plaintiff Rubia Serna (“Serna”) moves to amend her complaint and to remand this action
18 to Kern County Superior Court. Doc. 22 (“MTR”). Defendant Costco Wholesale Corporation
19 (“Costco”) filed an opposition, Doc. 24 (“Opp’n”); Serna did not file a reply. The Court took the
20 motion under submission on October 17, 2024. Doc. 25. For the reasons set forth below, Serna’s
21 motion is granted.

22 **I. Background**

23 On July 6, 2023, Serna brought this case in state court alleging that defendant Costco
24 negligently failed to maintain a safe condition at its store in Bakersfield, California, and that she
25 was injured when she slipped and fell in the store. Doc. 1-1 (“Compl.”). The complaint asserts
26 causes of action under California law for premises liability and negligence against Costco and
27 Doe defendants. *Id.* Costco removed the action to this Court on August 16, 2023, based on
28 diversity jurisdiction. Doc. 1 (“Notice of Removal”).

1 In its notice of removal, Costco asserted that this Court has subject matter jurisdiction
2 because the amount in controversy exceeds \$75,000 and the parties are completely diverse. *Id.*
3 ¶¶ 5–6. Serna is a resident of Bakersfield, California, and Costco is a corporation registered in
4 the state of Washington with its principal place of business in Washington. *Id.* ¶ 5.

5 On September 22, 2023, Serna filed a motion to file a first amended complaint joining
6 Martha Amador Lopez, whom she alleged was the Costco store manager, as a defendant. Doc. 6.
7 In her motion, Serna also moved to remand the case to state court as diversity would no longer
8 exist following the joinder of Ms. Lopez as a defendant. *Id.* In its opposition filed October 16,
9 2023, Costco disputed that Ms. Lopez was the store manager or a Costco employee at the time of
10 Serna’s accident. Doc. 8 at 6–7, 9.¹

11 On June 21, 2024, the Court set a deadline for the parties to submit additional evidence as
12 to whether Ms. Lopez was the store manager, Doc. 14, and both parties filed declarations which
13 established that Serna had attempted to join the wrong person, *see* Doc. 15; Doc. 16. For that
14 reason, on July 10, 2024 the Court denied without prejudice Serna’s initial motion to file a first
15 amended complaint and to remand the case. Doc. 18.

16 On August 30, 2024, Serna filed the pending motion for leave to amend and for remand of
17 the case to state court. MTR. Serna seeks leave to amend her complaint so that she can join as a
18 defendant Michael Stranathan, whom she now contends was the store manager of the Bakersfield
19 Costco on the date of her accident. *Id.* at 5. Serna submitted evidence demonstrating that he was
20 the manager on that date. Doc. 22-1 (“Kidwell Decl.”) ¶¶ 7–8; Doc. 15, Ex. B (“Kazakian
21 Decl.”) ¶¶ 5–7; Doc. 15, Ex. E at 45–47; Doc. 15, Ex. F at 50, 59–60. Costco does not dispute
22 that Mr. Stranathan was the store manager on the date of Serna’s accident. *See generally* Opp’n;
23 Doc. 23-1 (“Melo Decl.”).

24 Principally, Serna argues Mr. Stranathan is a proper defendant to be included in the action
25 because store managers owe a duty of care to customers under California law, and therefore, her

26 ¹ Due to the elevation of the prior district judge, no district judge was assigned to this matter
27 from December 1, 2023 to March 13, 2024. The case was reassigned to the undersigned on
28 March 14, 2024.

claims against Costco and the store manager should be adjudicated together, as permitted by 28 U.S.C. § 1447(e), the statutory standard for post-removal joinder of non-diverse parties. MTR at 7–16. If the Court permits joinder of the store manager, Serna argues that the Court must also remand the action to state court because complete diversity between the parties will no longer exist as the store manager is a resident of California, like Serna. *Id.* at 17. In opposition, Costco asserts fraudulent joinder and argues, alternatively, that the Court should exercise its discretion to deny the motion based on Serna’s delay in seeking joinder of Mr. Stranathan. Opp’n at 6–7, 8–10.

II. Legal Standard

“If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.” 28 U.S.C. § 1447(e). “The language of § 1447(e) is couched in permissive terms,” and “the decision regarding joinder of a diversity destroying-defendant is left to the discretion of the district court.” *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998). District courts generally consider the following factors when exercising their discretion to permit or deny joinder of non-diverse defendants:

- (1) whether the new defendants should be joined under Fed. R. Civ. P. 19(a) (“Rule 19”) as “needed for just adjudication”; (2) whether the statute of limitations would preclude an original action against the new defendant[] in state court; (3) whether there has been unexplained delay in requesting joinder; (4) whether joinder is intended solely to defeat federal jurisdiction; (5) whether the claims against the new defendant appear valid; and (6) whether denial of joinder will prejudice the plaintiff.

IBC Aviation Serv., Inc. v. Compania Mexicana de Aviacion, S.A. de C.V., 125 F. Supp. 2d 1008, 1011 (N.D. Cal. 2000) (citing, *inter alia*, *Palestini v. Gen. Dynamics Corp.*, 193 F.R.D. 654, 658 (S.D. Cal. 2000)).

“Any of these factors might prove decisive, and none is an absolutely necessary condition of joinder.” *Sabag v. FCA US, LLC*, No. 2:16-CV-06639-CAS(RAOX), 2016 WL 6581154, at *4 (C.D. Cal. Nov. 7, 2016) (quoting *Cruz v. Bank of N.Y. Mellon*, No. 12-00846, 2012 WL 2838957, at *4 (N.D. Cal. July 10, 2012)). Considerations of judicial economy are especially

relevant and often animate courts' assessment of these factors. *See, e.g., Palestini*, 193 F.R.D. at 658 ("The alternative of separate lawsuits and indemnity actions between defendants is a waste of time and resources."). A defendant "bears the burden of establishing that removal is proper," and any doubt as to removability is resolved in favor of remand. *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).

III. Discussion

The Court turns to Serna's motion for post-removal joinder of Mr. Stranathan, and to Costco's fraudulent joinder argument, and considers in turn each of the six factors set out above.

First, the Court considers whether a new defendant should be joined under Rule 19 as needed for just adjudication. "Rule 19 requires joinder of persons whose absence would preclude the grant of complete relief, or whose absence would impede their ability to protect their interests or would subject any of the parties to the danger of inconsistent obligations." *Dunning v. Hallmark Specialty Ins. Co.*, No. 2:20-cv-02455-ODW, 2020 WL 6123133, at *2 (C.D. Cal. Aug. 11, 2020) (citation omitted). It is important to note, however, that "[a]lthough courts consider whether a party would meet [Rule 19's] standard for a necessary party, amendment under § 1447(e) is a less restrictive standard than for joinder under" Rule 19. *IBC Aviation Serv.*, 125 F. Supp. 2d at 1011–12. Therefore, this factor supports joinder when "failure to join would lead to separate and redundant actions" and discourages joinder when the party sought to be joined is only "tangentially related to the cause of action or would not prevent complete relief." *Id.*

This factor favors joinder. Serna has a colorable claim against both the store manager and Costco, and those claims are closely related. California courts recognize that store managers owe a common law duty of care to invitees and can be held liable for breach of that duty. *See Dillon v. Wallace*, 148 Cal. App. 2d 447, 455–56 (Cal. Dist. Ct. App. 1957) ("Here, [the defendant store manager] was in charge of the market and under a duty to protect its customers from injury by the exercise of ordinary care. . . . The breach of that duty to the customers will render him [and his employer] liable to them."). In addition, federal courts routinely allow joinder of store managers notwithstanding the defendant employer's argument that they are not a necessary party due to the employer's vicarious liability. *See, e.g., Vreeland v. Target Corp.*, No. C 09-5673, 2010 WL

545840 (N.D. Cal. Feb. 11, 2010) (holding that post-removal joinder of store manager was proper because plaintiff made out colorable common law claim of negligence against store manager, even though employing company could be held vicariously liable). “Respondeat superior makes employers vicariously liable for the negligent acts of their employees . . . [but it] does not shield employees from suits for their negligence, [so employees] may be properly joined under Rule 19.” *Forster v. Tractor Supply Co.*, No. 1:23-cv-00627-KES-BAM, 2024 WL 3913461, at *3 (E.D. Cal. Aug. 23, 2024) (internal quotations omitted). The underlying acts supporting Serna’s claims are the same for both defendant Costco and the store manager, and in the interest of efficiency and judicial economy these claims should be heard together.

Second, the Court considers the effect of the statute of limitations on Serna’s ability to sue Mr. Stranathan separately. “If the statute of limitations would preclude the filing of an action against the new defendants in state court, this factor would weigh in favor of granting leave to amend to add the new defendants.” *Forster*, 2024 WL 3913461, at *3 (same); *see also Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988) (explaining that courts prefer to remand “when the statute of limitations on the plaintiff’s state-law claim[] has expired before the federal court has determined that it should relinquish jurisdiction over the case”). In California, actions for personal injury must be filed within two years of the underlying accident. Cal. Code Civ. Pro. § 335.1. Serna’s injury occurred on August 10, 2021, she filed the complaint in state court on July 6, 2023, and the two-year statute of limitations lapsed on August 10, 2023. Accordingly, Serna will be unable to pursue a claim against the store manager unless the Court allows joinder. This factor weighs in favor of joinder.

Third, the Court considers whether there was an unexplained delay in seeking joinder. Serna filed her complaint on July 6, 2023, Costco removed about one month later, and on September 15, 2023 Serna filed her initial motion to join the store manager (albeit the wrong person) and to remand the case. Doc. 4. Serna had to hire a private investigator to attempt to determine the identity of the store manager, and she filed her initial motion to amend and to remand shortly after the case was removed to federal court. Kidwell Decl. ¶¶ 7–8; Doc. 6-1 at ¶ 4. Serna did not unreasonably delay in filing her initial motion. *See, e.g., IBC Aviation Serv.*,

1 125 F. Supp. 2d at 1012 (finding that motion for post-removal joinder filed over two months after
2 initial complaint was timely).

3 However, Serna learned on October 31, 2023 – about six weeks after filing her first
4 motion to remand – that Mr. Stranathan, rather than the individual she identified in her initial
5 motion, was the store manager. *See* Doc. 15 ¶ 5. In its opposition to Serna’s initial motion,
6 Costco pointed out that Serna had incorrectly identified the store manager, although Costco did
7 not identify the correct store manager. *See* Doc. 8 at 7. The private investigator firm that Serna
8 had hired then undertook further investigation, it let go the investigator initially assigned to
9 Serna’s case, and a new investigator informed Serna that Mr. Stranathan was the Costco store
10 manager at the time of the incident. Kidwell Decl. ¶¶ 5–7. Inexplicably, Serna did not seek to
11 amend her initial motion to remand. Instead, she waited for this Court to rule on her initial
12 motion even though she apparently knew it was based on incorrect information. *See* Doc. 18.
13 This factor thus weighs heavily against joinder.

14 Fourth, the Court considers whether joinder is intended solely to defeat federal
15 jurisdiction. Although some courts have held that this factor should weigh against the plaintiff
16 when the plaintiff’s motive is to orchestrate a remand, *see Dunning*, 2020 WL 6123133, at *4–5,
17 others have looked to the statutory language and legislative history of § 1447(e) to hold
18 otherwise, *see, e.g., Righetti v. Shell Oil Co.*, 711 F. Supp. 531, 535 (N.D. Cal. 1989) (holding
19 that § 1447(e) does not require an inquiry into the plaintiff’s motive). Section 1447(e) creates a
20 unique rule for post-removal joinder which is “a less restrictive standard than for joinder under
21 Rule 19.” *IBC Aviation Serv.*, 125 F. Supp. 2d at 1012. Considering this, courts have recognized
22 that § 1447(e) “was intended to undermine the doctrine employed by some courts that
23 amendments which destroyed diversity were to be viewed with suspicion.” *IBC Aviation Serv.*,
24 125 F. Supp. 2d at 1012. In fact, “the question of whether joinder is solely intended to defeat
25 jurisdiction is ‘intertwined’ with the question of whether the claims against the new defendant
26 appear valid.” *Sabag*, 2016 WL 6581154, at *5–6 (finding that plaintiff’s motive in joining
27 dealership defendant was “not solely to destroy diversity” because plaintiff’s claim against
28 dealership was “facially legitimate”). “Courts have permitted joinder even where the plaintiff

1 appears to be primarily motivated by a desire to defeat diversity jurisdiction, as long as the
2 plaintiff has alleged a valid claim against the non-diverse defendant.” *Forster*, 2024 WL
3 3913461, at *4 (quotations omitted).

4 Serna has demonstrated that she has a colorable claim against both the store manager and
5 Costco and intends to pursue those claims. The complaint alleges that Costco and its employees
6 failed to keep the store safe for customers through a variety of omissions. Compl. ¶ 15. “The
7 actions of . . . the store manager [are] more than tangentially related [to the claims against Costco]
8 – [his] actions are directly at issue.” *Forster*, 2024 WL 3913461, at *4. Accordingly, this factor
9 supports joinder.

10 Fifth, the Court considers whether the claims against Mr. Stranathan appear valid. “This
11 factor requires only that the claim be facially valid, which is a lower standard than on a motion to
12 dismiss or a motion for summary judgment.” *Id.* at *4. As set forth above, this factor is satisfied.
13 Serna alleges a facially valid claim of negligence against Mr. Stranathan. To make out a common
14 law claim of negligence, a “plaintiff must demonstrate that the defendant owed the plaintiff a
15 legal duty, that the defendant breached the duty, and that the breach was a proximate or legal
16 cause of . . . her injuries.” *Morris v. De La Torre*, 36 Cal. 4th 260, 264 (Cal. 2005). Serna alleges
17 that the store manager owed her a legal duty of care and breached that duty when he failed to
18 remove the slippery liquid substance from the floor, failed to warn customers, and failed to block
19 off the area, among other things. Compl. ¶¶ 15–18. Additionally, she alleges that the breach was
20 the proximate cause of her injuries and resulted in pain, suffering, and medical expenses. *Id.*

21 As Serna has a facially valid claim against Mr. Stranathan, Costco’s fraudulent joinder
22 argument fails. A defendant seeking to make out a claim of “fraudulent joinder bears a ‘heavy
23 burden’ since there is a ‘general presumption against finding fraudulent joinder.’” *Grancare,*
24 *LLC v. Thrower*, 889 F.3d 543, 548 (9th Cir. 2018) (quoting *Hunter v. Philip Morris USA*, 582
25 F.3d 1039, 1046 (9th Cir. 2009)). To meet this “heavy burden,” Costco must show either “(1)
26 actual fraud in the pleading of jurisdictional facts, or (2) [an] inability of the plaintiff to establish
27 a cause of action against the non-diverse party in state court.” *Id.* The first way is not relevant
28 here, as Costco does not allege any actual fraud in plaintiff’s pleading of the jurisdictional facts.

1 Fraudulent joinder can be “established the second way if a defendant shows that an ‘individual
2 joined in the action cannot be liable on any theory.’” *Id.* (quoting *Ritchey v. Upjohn Drug Co.*,
3 139 F.3d 1313, 1318 (9th Cir. 1998)).

4 If there is even a “*possibility* that a state court would find that the complaint states a cause
5 of action against any of the resident defendants, the federal court must find that the joinder was
6 proper and remand the case to the state court.” *Id.* (quoting *Hunter*, 582 F.3d at 1046) (emphasis
7 in original). “A claim against a defendant may fail under Rule 12(b)(6), but that defendant has
8 not necessarily been fraudulently joined.” *Id.* at 549. Fraudulent joinder may be shown when “a
9 defendant presents extraordinarily strong evidence or arguments that a plaintiff could not possibly
10 prevail on her claims,” but *not* when a defendant “raises a defense that requires a searching
11 inquiry into the merits of plaintiff’s case, even if that defense, if successful, would prove fatal.”
12 *Id.* at 548–49 (citations omitted).

13 Costco’s argument that Serna’s motion amounts to fraudulent joinder does not withstand
14 scrutiny. As explained above, she has demonstrated that California common law imposes duties
15 on store managers as well as on their employing companies, and Serna intends to pursue such a
16 claim against the store manager. The Court declines to make “a searching inquiry into the merits
17 of [Serna’s] claim” because all that need be shown is a “*possibility* that a state court would find
18 that the complaint states a cause of action” against the store manager. *Grancare*, 889 F.3d at 548.
19 Serna has made that showing, so there is no fraudulent joinder.

20 Sixth, the Court considers whether denial of joinder will prejudice Serna. She points out
21 that she has a colorable claim against Mr. Stranathan under California law and will be forced to
22 forego that claim if the Court denies joinder. MTR at 16. As Serna would be prejudiced if
23 joinder were denied, this factor, too, favors joinder and remand.

24 In sum, the § 1447(e) factors on balance favor allowing the joinder of Mr. Stranathan.
25 While Serna’s delay in bringing the present motion weighs against joinder, all five other factors
26 support joinder. Moreover, this case has not yet proceeded beyond the initial pleadings stage and
27 Costco has not established prejudice due to Serna’s delay in bringing the present motion. Given
28 “the balance of these factors, the strong presumption against removal jurisdiction, and [Costco’s]

failure to meet its heavy burden of proving fraudulent joinder,” *Forster*, 2024 WL 3913461, at *5, joinder of Mr. Stranathan is appropriate.

IV. Conclusion and Order

Costco removed this action based on diversity of citizenship. Doc. 1. As the joinder of Mr. Stranathan, a California resident, defeats diversity, the Court will remand this action to state court.

Accordingly, the Court ORDERS:

1. Serna’s motion, Doc. 22, is GRANTED.
2. Serna’s amended complaint at Doc. 22-1, Ex. C, is deemed filed and is the operative complaint.
3. This action is REMANDED to Kern County Superior Court for lack of subject matter jurisdiction.
4. The Clerk of Court shall mail a copy of this order to the clerk of Kern County Superior Court.
5. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: October 23, 2024


UNITED STATES DISTRICT JUDGE